

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

74-2032

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Nos. 74-2032,-2033,-2036

ARCHIE CHESNEY,

Plaintiff-Appellee-Appellant

vs.

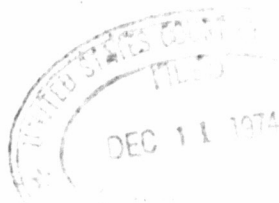
JOHN R. MANSON, Individually and as Commissioner of
Corrections,
FREDERICK E. ADAMS, Individually and as Warden,
Connecticut Correctional Institution, Somers
ET AL.,

Defendants-Appellants-Appellees

ON APPEAL FROM THE DISTRICT OF CONNECTICUT

BRIEF AND APPENDIX OF THE CROSS-APPELLANT

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ISSUES PRESENTED

- I. Did the District Court err in dismissing plaintiff's claim that placement in the "strip" cell from February 29-March 2, 1972 and from March 14-March 17, 1972 constituted a violation of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution? Did the District Court also err in finding Plaintiff's claim for injunctive relief moot?
- II. Did the District Court err in dismissing plaintiff's claim that the injection of plaintiff with thorazine without prior examination by a doctor and the placement in the strip cell on October 23, 1971 constituted a violation of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
- III. Did the District Court err in dismissing plaintiff's claim that incarceration in administrative segregation for twenty-two days constituted a violation of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
- IV. Did the District Court err in denying plaintiff damages?

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FREDERICK E. ADAMS, Individually and as Warden,
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ET AL.,

Defendants-Appellants-Appellees

ON APPEAL FROM THE DISTRICT OF CONNECTICUT

BRIEF AND APPENDIX OF THE CROSS-APPELLANT

Statement of the Case

This is a cross-appeal from a judgment of the United States District Court for the District of Connecticut dismissing plaintiff's claims, other than his request for a declaratory judgment that Section 17-194a of the Connecticut General Statutes was unconstitutional, and denying plaintiff damages.

Plaintiff instituted this civil rights action concerning medical treatment by medical personnel at the Connecticut Correctional Institution, Somers ("CCIS"), pursuant to 42 U.S.C. §1983 pro se in September 1972. A series of responsive pleadings between the plaintiff and defendants followed. Subsequently, plaintiff was transferred to the Security Treatment Center, a maximum security mental health facility, from the CCIS, and he submitted a claim to the Court concerning the legality of the transfer. The District judge appointed counsel and a substituted amended complaint was filed consolidating all the claims. Three days of hearings were held.

The complaint alleged several violations of plaintiff's constitutional rights: The placement of plaintiff with his hands handcuffed behind his back in a "strip" cell on October 23, 1971, which contained no mattress or sink and in which the toilet was a grating which could only be flushed from outside the cell, and the forcible injection of plaintiff with drugs without prescription or prior examination by a licensed physician; the placement of plaintiff in the "strip" cell from February 29 to March 2, 1972, and March 14 to March 17, 1972; the transfer of the plaintiff to a mental health facility on two occasions without any opportunity at any time to have a judicial hearing on the question of mental illness and need for confinement in a mental health facility; and the placement of plaintiff in administrative segregation from April 5 to April 27, 1973.

The District Court in an opinion, published in part at 377 F. Supp. 887 (D. Conn. 1974) with the remainder reproduced in the Appendix at 1, entered a declaratory judgment declaring Section 17-194a, the Connecticut prison-to-mental health facility transfer statute, unconstitutional and dismissed the remaining claims; damages were denied. Judgment was entered on June 26, 1974. A notice of appeal by the defendant was filed on July 19, 1974 and the cross appeal was filed on July 23, 1974. The defendants recently have withdrawn their appeal.

ARGUMENT

I.

THE DISTRICT COURT ERRED IN DISMISSING PLAINTIFF'S CLAIM THAT CONFINEMENT IN THE "STRIP CELL" CONSTITUTED CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT AND THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. THE DISTRICT COURT ALSO ERRED IN FINDING PLAINTIFF'S CLAIM FOR INJUNCTIVE RELIEF MOOT.

Plaintiff was placed in a strip cell on two occasions for periods of substantial duration (February 29-March 2, 1972 and March 14-17, 1972). The strip cell employed in the hospital unit of the hospital is indistinguishable from the strip cell employed in maximum punitive segregation.^{1/} The cell contained no sink or commode. To defecate, plaintiff had to squat by a grating covering a hole in the floor;^{2/} the "Chinese toilet" could only be flushed manually from outside the cell. 377 F. Supp. at 890. Placement in a cell of this nature for only five days has been found to be cruel and unusual and "below the irreducible minimum of decency required by the Eighth Amendment." LaReau v. McDougall, 473 F.2d 974, 978 (2d Cir. 1972) cert. denied, 414 U.S. 878 (1973). This Court found the lack of

^{1/} Compare 377 F. Supp. at 890 with LaReau, 473 F.2d at 977.

^{2/} See Tr. I at 11:

THE COURT: If you can describe the cell --

THE WITNESS [THE PLAINTIFF]: The cell had only a hole in the floor, which is used as a stool, just a round hole in the floor. There is no stool there, but you have to use it as a stool if you have to defecate, and you have to go in the hole and you can't flush the stool, and they feed you in the cell, they have a hole in the floor where they stick the tray in for you to eat.

...continued on next page

toilet facilities particularly offensive:

What is most offensive to this Court was the use of the "Chinese toilet." Causing a man to live, eat and perhaps sleep in close confines with his own human waste is too debasing and degrading to be permitted. The indecent conditions that existed in this Somers prison strip cell seriously threatened the physical and mental soundness of its unfortunate occupant. In order to preserve the human dignity of inmates and the standards of humanity embraced by our society, we cannot sanction such punishment.

The District Court, however, found no violation of plaintiff's constitutional rights and dismissed the claim, concluding that the confinements were "for very brief periods of time and were not imposed for punishment." App. at 6.

"[T]he mere characterization of an act as 'treatment' does not insulate it from Eighth Amendment scrutiny ." Knecht v. Gillman, 488 F.2d 1136, 1139 (8th Cir. 1973). The Eighth Circuit noted that vomiting was a "painful and debilitating experience" and that inducing such behavior violated the Eighth Amendment. 488 F.2d at 1140. Living and eating with one's own human waste in small confines is similarly painful and debilitating. Under the facts of this case,

2/cont.

THE COURT: This facility doesn't have any flush facility at all?

THE WITNESS: Not on the inside of the cell, on the outside they have one, but after I -- I came back to my conscious, I asked the officer to flush the stool and they wouldn't flush the stool until they had to get ready. Sometime I had to eat with the stool still stinking....

the placement of plaintiff in the strip cell does not pass constitutional muster.

The period of plaintiff's confinement in the strip cell was similar to the confinement of LaReau which this Court held to be unconstitutional. While plaintiff's placement purportedly was for treatment, this is a distinction without a difference. Corrections Department personnel testified that the hospital wing of the prison is equipped with rooms with adequate toilet facilities; however, these were not employed in plaintiff's case. There was no indication that plaintiff was threatening physical danger to self or others. Tr. II at 43. The medical record shows a complete absence of any such indication. The nurse's record reveals no disturbances or incidents while plaintiff was in the strip cell and indicates plaintiff's repeated request to be released to the population. App. at 10-12, 14-16. Even if justification exists for maintenance of a strip cell under some circumstances, there was no justification for its use in plaintiff's situation. See LaReau, supra, note 6. Classifying conduct as "treatment" rather than punishment does not remove the safeguards of the Due Process Clause.

The mere fact that the defendants obeyed this court's order in LaReau and adopted the District Court's suggestion at the close of the instant case does not render the claim for injunctive relief moot. The defendants below expressly indicated that they did not believe the changed procedures and facilities to be constitutionally required.

Defendants' brief in the District Court at 1,2. Only recently in the prison context, this Court indicated that "good faith assurances" were not sufficient and that the plaintiff was entitled to a judicial decree. See Newkirk v. Butler, 499 F.2d 1214, 1219 (2d Cir.), cert. granted sub nom. Preiser v. Newkirk, U.S. , 43 U.S.L.W. 3239 (No. 74-107) (October 21, 1974). Plaintiff is entitled to at least injunctive or declaratory relief. This matter should be remanded to the District Court for the fashioning of an appropriate remedy.

II.

THE DISTRICT COURT ERRED IN DISMISSING PLAINTIFF'S CLAIMS THAT THE INJECTION OF PLAINTIFF WITH THORAZINE WITHOUT PRIOR EXAMINATION BY A DOCTOR AND THE PLACEMENT IN THE STRIP CELL ON OCTOBER 23, 1971 CONSTITUTED A VIOLATION OF THE EIGHTH AMENDMENT AND THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

It is undisputed that on October 23, 1971 plaintiff was twice injected with thorazine by a medical attendant and placed in a strip cell. There was no personal examination of the plaintiff by a doctor prior to the injection. According to the medical record of plaintiff on file at the CCIS, there was no history of psychiatric disorders. Prior to the incident in question, no member of the medical staff thought plaintiff had psychiatric difficulties. 377 F. Supp. at 887. Defendants claim that the injection was administered after a telephone conversation with Dr. Palumba, then at his residence in Somers. The medical record disputes this contention. The nurse's report shows a drug administration at 3:10 a.m. and 5:25 a.m. The doctor's order sheet, however, reveals an order by a physician only at 5:25. App. at 7,8. This was indicated in plaintiff's pro se answering papers, in plaintiff's reply, and at trial; at no time did defendants establish that the medical record was incorrect. See testimony of Dr. Palumba, Tr. II at 32.^{3/} Prescription and administration of a drug

^{3/} Insofar as the Court below concluded that both injections followed the telephone call, 377 F. Supp. at 889, such finding is without evidence and is clearly erroneous. Rule 52a, F.R. Civ. P. The medical record and the testimony of the doctor called indicate the telephone order was made at 5:25 a.m.

such as thorazine by a non-physician is a situation where the "medical treatment of the prisoner is so shocking as to constitute a denial of due process." Startz v. Cullen, 468 F.2d 560, 561 (2d Cir. 1972).

Assuming arguendo that Dr. Palumba by telephone and with no prior knowledge of plaintiff had authorized the two injections of thorazine, placement in the strip cell without a mattress, and the utilization of metal handcuffs to the plaintiff's hands behind his back, the effect is "treatment" which offends more than "some fastidious squeamishness or private sentimentation." Rochin v. California, 342 U.S. 165, 172 (1952). See Jackson v. Bishop, 404 F.2d 571, 579 (8th Cir. 1968)(referring to the Eighth Amendment: "broad and idealistic concepts of dignity, civilized standards, humanity, and decency are useful and usable.")

Dr. Palumba, a resident of the same town where the CCIS is located, was awakened by a telephone call at home, one of approximately one dozen which he receives in a year. Tr. II at 35. A medical attendant described a situation which he has observed. The medical record of the CCIS indicate no prior psychiatric history; neither the physician nor the medical attendant was acquainted with the plaintiff. Tr. II at 32. No physician came to the prison that night. However, two injections of thorazine were administered; metal handcuffs were placed on plaintiff with his hands behind his back; and he was taken to a strip cell and placed on the concrete floor. How the use of metal handcuffs for

six hours could constitute medical treatment is a mystery. For most of the period in question, plaintiff was sleeping. A guard, not a doctor, ordered the handcuffs removed. Tr. II at 35. In fact, plaintiff's ultimate removal from the strip cell was not following a personal examination by a licensed physician but by another telephone order from Dr. Palumba. App. at 7. If plaintiff was in any way so disturbed that restraints might have been necessary, metal handcuffs would appear to be counterproductive since one could cut or otherwise injure himself.

The incidents of the evening indicate a pattern of conduct which is debasing and inhumane. It truly "shocks the conscience." "In order to preserve the human dignity of inmates and the standards of humanity embraced by our society, we cannot sanction such punishment." LaReau at 978. The Court below classified the treatment as "uncomfortable and even frightening," but dismissed the claim. The District Court's legal conclusion is in error and should be reversed.

III.

THE DISTRICT COURT ERRED IN DISMISSING PLAINTIFF'S CLAIM THAT INCARCERATION IN ADMINISTRATIVE SEGREGATION FOR TWENTY-TWO DAYS CONSTITUTED A VIOLATION OF THE EIGHTH AMENDMENT AND THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Plaintiff was returned to the CCIS from the Security Treatment Center on April 4, 1973. He spent that evening in a room in the hospital wing and the following day was placed in administrative segregation. 379 F. Supp. at 890. Plaintiff repeatedly protested his confinement in administrative segregation, but to no avail. See e.g., Petitioner's Exhibit 1. He was released from segregation only to be transferred once again to the STC. Administrative segregation is a more rigorous confinement than regular cell placement. While in administrative status, plaintiff was forced to remain in his cell for 24 hours each day. All meals were eaten in the cell. No exercise period was provided. No work period was permitted to relieve the boredom. Tr. I at 142-3.

Plaintiff made repeated efforts to have his status changed. Each day, he informed the guard on duty of his desire. He wrote three letters to this effect. Tr. I at 24-25. No response was ever given; no classification hearing was ever held.

The alleged reason for placement in administrative segregation was a letter to the Commissioner from plaintiff's appellate attorney Kunin with regard to plaintiff's fears of Mr. O'Hare and a request for transfer to another correction facility. In response, Deputy Commissioner Kowalczyk indicated that plaintiff would be withheld from the general

population until "his fears are verified." Attorney Kunin immediately responded, emphasizing that the fears in no way involved guards or other inmates, but only the medical staff; therefore, administrative segregation would be inappropriate. The letter was received prior to plaintiff's return to CCIS. Despite this exchange, plaintiff still was placed in administrative segregation upon discharge from the hospital unit. Opinion of the District Court, App. at 4. Plaintiff was only removed from administrative segregation when he was sent to the mental health facility on April 27, 1973. The transfer order of Warden Robinson contains the following language: "The precipitating factor here appeared to be the deprivation or isolation condition in which he was maintained; i.e., segregation." Respondent's Exhibit B. See also testimony of Dr. VanderWerff, Tr. I at 80.

The Eighth Amendment "is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." Weems v. United States, 217 U.S. 349, 378 (1910). It "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, 356 U.S. 86, 101 (1958). See also Johnson v. Glick, 481 F.2d 1028 (2d Cir. 1973). While isolated confinement per se does not constitute a violation of constitutional standards, Sostre v. McGinnes, 442 F.2d 178, 192 (2d Cir. 1971), cert. denied sub nom. Oswald v. Sostre, 405 U.S. 978 (1972), here the

treatment of the prisoner is conduct that shocks the conscience.

The District Court erred in its conclusion of law.

Plaintiff was allegedly placed in administrative segregation for his own protection, despite his attorney's indication, which is undisputed, that this placement did not in any way prevent the access of Mr. O'Hare (the individual feared) to the plaintiff. Assuming arguendo a good faith effort on the part of the corrections officials in the initial instance, no reason existed to deny plaintiff all exercise time during the entire period of twenty-two days. Furthermore, plaintiff was kept in administrative segregation for a substantial period of time after the Commissioner of Corrections had determined that no cause existed for the fears, See Commissioner Manson's affidavit of April 18, 1973, and the medical staff had determined that the deprivation of administrative segregation were injurious to plaintiff's health. Knowing of the medical situation, the department continued to confine plaintiff in segregation until past the breaking point in the opinion of the Commissioner and his agent, it was necessary to remove plaintiff to a mental health facility. This conduct shocks the conscience of a civilized society.

IV.

HAVING DECLARED SECTION 17-194a UNCONSTITUTIONAL,
THE DISTRICT COURT ERRED IN DENYING DAMAGES.

Relying on United States ex rel. Schuster v. Herold, 410 F.2d 1071 (2d Cir. 1969) cert. denied 396 U.S. 847 (1970), the Court below declared the Connecticut statute authorizing the transfer of prisoners to mental health facilities without hearings to be unconstitutional in that Section 17-194a was in violation of the Equal Protection Clause of the Fourteenth Amendment. The defendants have withdrawn their appeal from the judgment below. The District Court, however, declined to award attorney fees because the "[d]efendant was acting in good faith, pursuant to a law that had not been declared invalid,^{4/}... the transfer papers were not facially defective,^{5/}...[and the defendant did not] have any indication from the state attorney general or any other official that the statute might have constitutional defects." 377 F. Supp. at 896. In so concluding, the District Court erred.

^{4/} However, the District Court stated the following:
The staff at Somers diagnosed him as paranoid, noting among his symptoms an exaggerated estimate of his legal rights and the delusion that he might be deprived of them. While some of his contentions are without merit, his basic claim that the transfer procedure denied him of equal protection of the laws is by no means a delusion; in fact, it is a well founded view of constitutional requirements. (Emphasis added.)

377 F. Supp. at 889. The admission note about plaintiff by the consulting psychiatrist at the Security treatment Center read as follows:

He was sent from Somers because his legal activities, refusal of medication and talk were suspected of being delusional and paranoid. This raises the very serious possibility that the reality based desperate struggle for freedom could be undermined and discredited by reinterpreting his behavior as paranoid and delusional.
Tr. I at 74. Compare with Schuster at 1078.

^{5/} However, the District Court found the transfer papers to be facially defective, 377 F. Supp. at 891.

The Connecticut statute declared unconstitutional in the instant case^{6/} and the New York statute declared unconstitutional in Schuster^{7/} are almost identical. Each treated the transfer of a prisoner to a mental health facility as a mere administrative matter

^{6/}Section 17-194a reads as follows:

Transfer of mentally ill inmates of correctional institutions to hospitals for mental illness. When, in the opinion of the commissioner of correction or the superintendent of the Connecticut School for Boys, any person confined under sentence of any court in any institution of the department of correction or in such school or held in jail pending disposition of his arrest has become mentally ill or appears to be mentally ill, said commissioner or superintendent shall, immediately, cause such person to be examined by a physician. If it appears from such examination that such person is mentally ill, the commissioner or superintendent, as the case may be, may, upon receipt of the certification of such physician and with the concurrence of the superintendent of such state hospital, transfer such person to a state hospital for the mentally ill, there to be safely kept until the expiration of the term for which such person was committed to such correctional institution, or until the disposition of his arrest, or until such person has recovered his sanity. At the time of such transfer, such physician shall present to the superintendent of such hospital a certificate to the effect that, in his opinion, such person is mentally ill and in need of hospital treatment....

^{7/}New York Correction Law §383 then read:

TRANSFER OF PRISONERS IN STATE PRISONS, REFORMATORIES AND PENITENTIARIES AND IN THE INSTITUTION FOR MALE DEFECTIVE DELINQUENTS TO DANMEMORA STATE HOSPITAL.-- Whenever the physician or the psychiatrist of any one of the state prisons, reformatories or penitentiaries or of the institution for male defective delinquents shall certify to the warden or superintendent thereof, that a male prisoner confined therein and sentenced or committed thereto for a felony, is, in his opinion insane, such warden or superintendent shall cause such prisoner to be transferred to the Dannemora state hospital and delivered to the medical superintendent thereof. Such superintendent shall receive the prisoner into such hospital, and retain him there until legally discharged....

410 F.2d at 1075, n. 1.

without affording the inmate any of the rights afforded those subject to civil commitment. Schuster, following the Supreme Court's decision in Baxstrom v. Herold, 383 U.S. 107 (1966), made the law of this circuit abundantly clear. As Circuit Judge (now Chief Judge) Kaufman stated:

Baxstrom clearly instructs that the procedures to be followed in determining whether one is commitable must be unaffected by the irrelevant circumstance that one is or has recently been under sentence pursuant to a criminal conviction, although the fact that one has committed a crime may be relevant to the substantive conclusion that he is mentally ill.

Schuster, 410 F.2d at 1081. "The teaching of Baxstrom [is] that a finding of dangerous or criminal behavior does not obviate the necessity for a separate and adequate determination of commitability." Schuster at 1092. As early as 1969 this Circuit stated the applicable federal constitutional law in this area; there could be no doubt that § 17-194a was unconstitutional.

The District Court's reliance on Tucker v. Maher, 497 F.2d 1309 (2d Cir.) cert. denied U.S. , 43 U.S.L.W. 3280 (No. 74-239) (November 11, 1974) is misplaced. In Tucker this Court was faced with the "difficult and confusing area of state action and due process" and noted that the "very recent history of such constitutional litigation in this circuit should convincingly indicate that the role of the prophet is precarious at best." 497 F.2d at 1315. In addition, this Court observed that a District Court recently had found the statute under question in Tucker to be constitutional. While normally there might be a "right to rely on the statutory law of the jurisdiction which had not been repealed or replaced, or declared unconstitutional

by any competent court at the time it was utilized," 497 F.2d at 1316, the Connecticut statute under challenge in this case was well within the proscription of Schuster and its invalidity was not open to serious question. Damages should have been awarded.

CONCLUSION

During an eighteen month period from October 1971 to May 1973, plaintiff was subjected to "treatment" which did not meet "the evolving standards of decency that mark the progress of a maturing society," Trop, 356 U.S. at 107. Plaintiff was denied basic fundamental rights and is entitled to relief. For all of the foregoing, the judgment of the District Court should be reversed and the case remanded for the fashioning of appropriate relief.

Respectfully submitted,

THE PLAINTIFF-APPELLEE-APPELLANT

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CERTIFICATION

A copy of the foregoing has been served by mail, postage prepaid, on Stephen J. O'Neill, Esq., Assistant Attorney General, 340 Capitol Avenue, Hartford, Connecticut this *10th* day of December 1974.

Michael J. Churgin

APPENDIX

1. PORTION OF DECISION OF THE DISTRICT COURT NOT REPORTED AT 377 F. SUPP. 887.	1
2. DOCTOR'S ORDER SHEET OF CCIS ON OCTOBER 23, 1971; PART OF EXHIBIT A.	7
3. NURSE'S RECORD OF OCTOBER 23, 1971.	8
4. DOCTOR'S ORDER SHEET AND NURSE'S RECORD FROM FEBRUARY 29-MARCH 2, 1972.	9
5. DOCTOR'S ORDER SHEET AND NURSE'S RECORD FROM MARCH 14-MARCH 17, 1972.	13

THE PREVIOUS PART OF THE OPINION IS REPORTED AT 377 F. Supp. 887. "Any person" certified by a physician as "a danger to himself or to others" may be confined in a hospital for fifteen days, and for an additional thirty days if during the fifteen-day period of observation, commitment proceedings are initiated. Although a procedure for temporary hospital confinement is also available under § 17-178, much more frequent use is made of § 17-183 with respect to civilians, see Comment, The Mentally Ill in Connecticut - A Survey, 6 Conn. L. Rev. 303, 356 (1974), and nothing in that section precludes its application to prisoners.

Although the statute under which defendant committed plaintiff was constitutionally defective, plaintiff is not entitled to damages. Defendant was acting in good faith, pursuant to a law that had not then been declared invalid. See Tucker v. Maher, ___ F.2d ___, ___ (2d Cir. May 7, 1974) slip op. ___; Fleming v. McNary, 461 F.2d 1353, 1357-58 (2d Cir. 1974); see also Pierson v. Ray, 386 U.S. 547, 557 (1967); United States v. Dameron, 460 F.2d 294, 295 (5th Cir. 1972). The transfer papers were not facially defective, Fleming v. McNary, *supra*, 491 F.2d at 1357; nor did defendant have any indication from the state attorney general or any other official that the statute might have constitutional defects, see Anderson v. Reynolds, 342 F.Supp. 101, 112 (D. Utah 1972).

IV. Other Claims Regarding Violations of Constitutional Rights

A. The Incident of October 23, 1971.

Plaintiff contends that the response of prison officials to his behavior on October 23, 1971 - two forcible

injections of Thorazine, confinement in a "strip cell" for six hours with his hands handcuffed behind his back - denied him due process of law and subjected him to cruel and unusual punishment, regardless of whether it is characterized as treatment or punishment. Factually, the most persuasive elements of this claim relate to (1) Dr. Palomba's reliance on the description of plaintiff's behavior given to him by phone prior to prescribing a heavy tranquilizer without examination of plaintiff or his medical record, (Testimony of Dr. Palomba, Tr. II, 34); (2) the use of handcuffs despite the absence of violent behavior on plaintiff's part (*id.*, at 49); and (3) the failure to provide plaintiff with examination by a physician over the weekend following injection of the drug, when he was released from the "strip cell" but confined in the hospital and might have suffered serious side-effects (Testimony of Dr. Hadberg, Tr. II, 66).

These facts, however, do not establish a pattern of action so shocking as to constitute a denial of constitutional rights. Martinez v. Mancusi, 443 F.2d 921 (2d Cir. 1970), cert. denied, 401 U.S. 963 (1971); Church v. Hogstrom, 416 F.2d 449 (2d Cir. 1969). Plaintiff's treatment may not have been the most desirable of all available alternatives or even the alternative considered fully adequate by all physicians in caring for private patients. But the conduct of defendant's agents is "far removed from the reckless failure to inform themselves of a prisoner's medical needs" held "to be the equivalent of intentionally inflicted harm." Startz v. Cullen,

468 F.2d 560, 561 (2d Cir. 1972). The treatment, though uncomfortable and even frightening, produced no threat of severe detriment. If plaintiff's condition was serious enough to require injection of the drug and such drastic physical restraint, perhaps examination by a physician was minimally to be expected. But the availability of a physician at all hours is apparently beyond defendant's resources. The practices employed here were not dissimilar to those that would have been applied in private institutions (Testimony of Dr. Hedberg, Tr. I, at 56). And the possibilities of self-inflicted harm were sufficient to justify some response, whether in the form of drugs or physical restraint, in view of plaintiff's extreme agitation and anxiety.

Finally, plaintiff's claim that prison officials violated corrections department regulations relating to forcible administration of medication is without merit. See plaintiff's exhibit 3. Defendant might reasonably have concluded that plaintiff was "not in possession of his faculties," and that compelled injection was therefore necessary.

Records of the Connecticut Correctional Institution at Somers indicate that plaintiff has received extensive and frequent medical treatment for a vast variety of physical complaints. See defendant's exhibit A. Aside from the possible coincidence of "food protests" by other inmates occurring at roughly the same time period, see Testimony of Archie Chesney, Tr. I, 16, no facts are alleged to support any conclusion of bad faith by prison officials in this instance of treatment.

California, 342 U.S. 165, 172 (1952), in view of the fears expressed by plaintiff's attorney, see Testimony of Plonski, Tr. I, 135-37, and the difficulty of locating a cell in the general population once these warnings had been investigated, id. at 145-46. In segregation, plaintiff was at least under more frequent observation, by a larger number of prison personnel, so that "foul play" by anyone was less likely. Moreover, efforts were made to minimize the hardships of segregation and approximate as nearly as possible non-segregated conditions of confinement, id. at 129-30.

C. Confinement in Strip Cell, February 29-March 2, 1972, and March 14-17, 1972.

Corrections officials have made commendable efforts to institute a number of improvements in conditions of "strip cell" confinement in light of LaBeau v. Manson, ___ F.2d ___ (2d Cir. 1973) and suggestions by this Court at the conclusion of the July 10, 1973, hearing, see Tr. II, 70-71; Affidavit of John R. Manson, Commissioner, Department of Corrections, February 28, 1974. The changes include more frequent examination by physicians and mental hygiene staff, increased opportunity for return to the general population, as well as installation of commodes and sinks and provision of bedding and mattresses. Indeed, as of March 1, 1974, "strip cells" have in effect been abolished, according to defendant's affidavit, as a result of these improvements.

The changed conditions concerning "strip cells" render moot plaintiff's claim for injunctive relief against future confinement under the conditions that formerly prevailed.

Nor is plaintiff entitled to damages for the confinements that occurred, under all the circumstances of this case. The confinements occurred prior to decision in LaReau v. Manson, supra. Moreover, these were confinements for very brief periods of time and were not imposed for punishment (Testimony of Dr. Van Der Werff, Tr. I, 78). Liability for damages is not warranted under such circumstances.

Accordingly, plaintiff's request for declaratory relief is granted and judgment will enter declaring § 17-194a unconstitutional. All other claims are dismissed.

Dated at New Haven, Connecticut, this 24 day of June, 1974.

Jon O. Newman

Jon O. Newman

United States District Judge

HOSPITAL

ORDERS FOR TREATMENT

Name *Chesney*

Number

24772

23/71

0525

Admit to Strip Cell

Seal handcuffed until well oriented & rational

Thorazine 100 mg IM q 2° P.R.N. - if causing disturbance
Check vital signs prior to (H) if possible

T.O. W. Calomha / Ethenig

23/71

11² AM.

Move to LV and.

Thorazine 50 mg TID P.O.

Second ga 155 H.S x 3 mg. T/O Dr. Polanco 17P

26/71

Discharge from Hospital

5/11/2011

NURSE'S RECORD

Name	Cherny	Number	24772
Date	Medication & Treatment	Remarks	
1/23/71		Admitted Ambulatory & Subtotal Custodial	
310	Thorazine 100mg 'M	Officer escorts. Hand Cuffed & hands behind	
325	Thorazine 150 mg. 'M	back. At 0310 Pt. was yelling as loud as	
		possible, trying to climb cell bars, in-	
		coherent, not oriented at all. Given Thorazine	
		100 mg 'M @ 0310 which held pt. until 0515,	
		at this time he subsided & started yelling	
		again. Admitted by T.O. of Mr. Palomba.	
		Hand Cuffs to be left on until pt. is com-	
		pletely rational & cooperative. His attitude	
		at 0310 was very aggressive. (Best description	
		is one of a Caged Wild Animal - both in	
		actions & voice). Fell asleep in approx 5	
		mins. after 0525(H), yelled until falling	
		asleep. Awoke & sitting up @ 0700, sat up	
		approx. 5 mins. then went back to sleep,	
		no noise during the time he was up.	
		Ethridge	
		8-4	
		Thorazine 100mg po. Hand cuffs removed at about 9 ⁰⁰ am by Pt. guard. Moved to room 715 P.O. Palomba about 11 ³⁰ am. Pt. well. 7-10 removed.	
		Ethridge	
		4-12	
		Thorazine 50mg po. Very good being in mood.	
		Ethridge	
		17-8	
		Quiet night. No insomnia. Medicated.	
		Eth. Bromide 35mg P.O. Asked @ 0215 why he was in the hall.	
		Explained to him a "no" again @ 0630. He	
		seems a little confused mentally. Ethridge	

Conn. State Prison Hospital

9

ORDERS FOR TREATMENT

NAME *Thompson* Number *20772*

Date Begun	Date Discontinued	DOCTOR'S ORDERS	Signature
29-72		<p>Admit to hospital for mental observation. Parahoid hostile attitude appears to be clearly disoriented making inappropriate statements.</p> <p>Thorazine 100 mgs I.M. stat 1 PM</p> <p>Thorazine 75 mgs Q.I.D. ^{1 PM} give I.M. if he refuses medication P.O.</p> <p>Maintain in strapping cell</p>	<i>J.R. Cullen</i>
29-72		Increase Thorazine to 125 mgs Q.I.D.	<i>J.R. Cullen</i>
29-72		<p>Keep on medication</p> <p>Move to a room - allow recreation</p>	<i>M. H. Head</i>
29-72		<p>Thorazine 125 mg q.i.d.</p> <p>179 mg at D</p>	<i>W. B. Frazier</i>
		<p>Discharge from hospital to city.</p>	<i>W. B. Frazier</i>

NURSE'S RECORD

Name

Cherry

Number

24772

Date	Medication & Treatment	Remarks
2-7-72	2-4	Admitted to stay cell under guard. Was seen here by Mr. O'Hare. Thought to obtain 1/2 at time of admission.
	Age:	
	Height:	
	Weight:	
	Allergies:	
4-5-72	Thorazine 100mg 1 M.	Med. given 100 mg Thorazine 1 p.m. stat. Peter M. Cunningham
2-9-72	4-12	
4-5-72	Thorazine 75mg p.o.	Quiet evening. Took medication well. Good appetite.
	& Thorazine 125mg	Requesting to return to population. L. Dean
4-6-72	12 to 8	CONF. NOC WITHIN STAIR CELL. SLEPT ALL NOC. NO UNUSUAL COMPLAINTS OR INCIDENTS
4-7-72	8 to 4	Seen on rounds by the N.R. Spent quiet day. Pt. is asking to be taken out of decompensation cell. Peter M. Cunningham
4-8-72	Thorazine 125mg	
4-9-72	4-12	
	& Thorazine 125mg	Taking medication well. Continues to request to be discharged. L. Dean
4-10-72	12-8	P. SLEEPS ENTIRE SHIFT ACCOMMODATING BUT CONFUSED. WANTS OUT
4-11-72	8-4	Remains disoriented. Sleeping most of day. Seen on rounds by Dr. Flannery. Taking med. R. Dean. Moved to private room.

NURSE'S RECORD

Name	Medication & Treatment	Remarks
Therapy		Number 74772
12/70	4-12	(2)
8 Thorazine 125mg	OT Thorazine, mood in room and looks like he is not meditated. Should be kept to the situation of the Dr. in A.M.	Therapy
12-8	Pt AWARE INTERMITTENTLY DURING SHIFT AND OBSERVED JUST SITTING IN CHAIR, STARING "VOIDLY" INTO SPACE. QUESTION OF "OVER-MEDICATION" PASSED ALONG TO 1ST SHIFT.	Therapy
12-4	8 to 4 Thorazine 125mg	Keeping most of day, very gassy. Seems worried by Dr. Fluker. Had no complaints. Taking meds well. L. Fluker
12/72	4-12	
8 Thorazine 125mg	Seems to be more alert this evening. Eating well.	Therapy
12-8	CONF No 5 INCIDENT OR COMPLAINT	Therapy
12-4	8 to 4 Thorazine 125mg	Quiet day Restful - no complaint Requesting when taken R. Ryan going to be released - says he is only here because he wouldn't move his cell to another living quarter - Appears worried & pleasant R. Ryan

NURSE'S RECORD

Name Whisney Number 24772

Date Medication & Treatment Remarks

4/72 4-12
 & Thorazine 125mg Taking medication well. No complaints. Sleeping most of the time.
 Dion

4/72 12 to 8
 Bunk + White 3+ Conf. No sleeping. Pt is no bother + quite accommodating in A.M. Takes A.M. meds willingly. Bowers haven't moved in 4 days. Ferde

4/72 8 to 4
 2 4 Thorazine 125mg PO taking meds. No complaints. Stays in bed most of day.
 R. Zwick

5/72 4-12
 & Thorazine 125mg Quiet evening. Sleeping most of the evening.
 Dion

6/72 12-8
 Quiet, uneventful night.
 J. Curtin

6/72 8-4
 2-4 Thorazine 125mg PO Discharged to D-Block.
 Prescription

Thorazine 125mg A+B
 Thorazine 125mg D

Dr. Vandeworth
 J. Curtin

Dr. J. Curtin
 Hospital Supervisor

O'Hara

Number

24772

14/72

Admit to hospital strip cell.
 Thorazine 100mg in stat
 and Thorazine 75mg in prn
 for disturbed behavior or if
 he refuses Medication p.o.

Thorazine 125mg A & B
 175mg at D.

If he cannot sleep -

Benadryl 50mg q.s + 1 repeat

G. H. V. Ad. Ber.

Is being from hospital today
 Cont. Thorazine as above + Benadryl
 if needed as immediately if not
 take need at the window

ONLY COPY AVAILABLE

J. M. C. [Signature]

NURSE'S RECORD

Name		Number
Date	Medication & Treatment	Remarks
11/4/72	2 P.M. Adm. to Strip Cell & Escort. Took med's right.	①
P.M.	Thorazine 100mg I.M.	Mason
4-12	Brendyl 175mg P.O.	Lent evening -
		Took only milk & water for supper asking for return to his cell.
		Took all med's incident - R. L. J.
MAR 12 TO 8		CAME NDC IN STRIP-CELL. NO INCIDENTS OR COMPLAINTS.
		FORGE
MAR 8 TO 4		
2	THORAZINE 100mg P.O.	Medicated as ordered. Eats a small amount. No unusual complaints.
F-9L 4-12		J. Curtin
81	Thorazine 100mg P.O.	Quiet, co-operative evening.
10	Brendyl 100mg P.O.	J. Curtin
MAR 8 TO 4		IT SLEEPS WELL WITHIN STRIP CELL, IS DOBILE, TAKES HIS MEDS & DIFFICULTY & EXPRESSES WISH TO BE RETURNED TO "HIS HOUSE" EATS BREAKFAST.
12 TO 8		FLOYD L. FORGE
MAR 8 TO 4		
2	Thorazine 100mg	Medicated as ordered. NP dept. notified that he would like to see someone from that dept. Co-operative.
21	Brendyl 100mg P.O.	J. Curtin

2352

Cheney

Number

24772

Medication & Treatment

Remarks

⑤

* ~~Wendell~~ ~~Ray~~ ~~Just~~ ~~evening~~. ~~Cooperative~~, taking
 * ~~Barbara~~ ~~Ray's~~ ~~meds~~ ~~well~~.

Whe	12 to 8	P. SLEPT ALL NOC. HE IS CALM E COLLECTED IN THE A.M., APPEARS RATIONAL, TAKES HIS MORNING MEDS 5 DIFFICULTY
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Nov	E to 4	FORDE
12	PHOPAZINE, 125mg po	Discharged from Hosp III Prescription sent to Pharmacy. (Note to be attached that if pt does not come to window for med - P.S. Dept to be notified.) R. Long K.

HOSPITAL

PROGRESS SHEET

Name

Cheney

7-17-72

16/72

placalm, Deponwice taking medication well

17/72

Dustings

JTH

[Signature]

